



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शुकवार, 28 जनवरी, 2005/8 माघ, 1926

हिमाचल प्रदेश सरकार

LAW DEPARTMENT
(Legislation)

NOTIFICATION

Shimla-2, the 6th January, 2005

No. LLR-E (9) 2/2000-Leg.-Vol.-IV.—The following Acts/Ordinances passed by the Parliament and published in the Gazette of India, Extra-ordinary, Part-II, Section-I are republished in the Himachal Pradesh Rajpatra for the information of the general public :—

Sl. No.	Title	Date of the Gazette of India in which these Acts/Or- dinances were published
1.	The Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004 (Ordinance No. 5 of 2004).	11-11-2004
2.	The National Commission for Minority Educational In- stitutions Ordinance, 2004 (Ordinance No. 6 of 2004).	11-11-2004

By order,

Sd/-
Secretary (Law).

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

*New Delhi, the 11th November, 2004/Kartika 20, 1926 (Saka)*THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
ORDINANCE, 2004

No. 6 OF 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance to constitute a National Commission for Minority Educational Institutions and to provide for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER-1

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the National Commission for Minority Educational Institutions Ordinance, 2004.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force at once.

2. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(a) "affiliation" together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a Scheduled University;

(b) "college" means a college or teaching institution (other than a University) established or maintained by a person or group of persons from amongst a minority community;

(c) "Commission" means the National Commission for Minority Educational Institutions constituted under section 3;

(d) "degree" means any such degree as may, with previous approval of the Central Government, be specified in this behalf by the University Grants Commission, by notification in the Official Gazette;

(e) "Member" means a member of the Commission and includes the Chairperson;

(f) "minority" for the purpose of this Ordinance, means a community notified as such by the Central Government;

(g) "Minority Educational Institution" means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities;

(h) "prescribed" means prescribed by rules made under this Ordinance;

- (i) "qualification" means a degree or any other qualification awarded by a University;
- (j) "Scheduled University" means a University specified in the Schedule;
- (k) "technical education" has the meaning assigned to it in clause (g) of section 2 of the All India Council for Technical Education Act, 1987 (52 of 1987);
- (l) "University" means a university defined under clause (f) of section 2 of the University Grants Commission Act 1956 (3 of 1956), and includes an institution deemed to be a University under section 3 of that Act or an institution specifically empowered by an Act of Parliament to confer or grant degrees.

CHAPTER-II

THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

3. *Constitution of National Commission for Minority Educational Institutions.*—(1) The Central Government shall, by notification in the Official Gazette constitute a body to be known as the National Commission for Minority Educational Institutions to exercise the powers conferred on, and to perform the functions assigned to it, under this Ordinance.

(2) The Commission shall consist of a Chairperson and two members to be nominated by the Central Government.

4. *Qualifications for appointment as Chairperson or other Member.*—(1) A person shall not be qualified for appointment as the Chairperson unless he,—

- (a) is a member of a minority community ; and
- (b) has been a Judge of a High Court.

(2) A person shall not be qualified for appointment as a Member unless he,—

- (a) is a member of a minority community ; and
- (b) is a person of eminence, ability and integrity;

5. *Term of office and conditions of service of Chairperson and Members.*—(1) Every Member shall hold office for a term of five years from the date on which he assumes office.

(2) A Member may, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of Member at any time.

(3) The Central Government shall remove a person from the office of Member if that person—

- (a) becomes an undischarged insolvent;
- (b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude;
- (c) becomes of unsound mind and stands so declared by a competent court;
- (d) refuses to act or becomes incapable of acting;
- (e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or
- (f) in the opinion of the Central Government, has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest :

Provided that no person shall be removed under this clause until that person has been given an opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination and a person as nominated shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

6. *Officers and other employees of Commission.*—(1) The Central Government shall provide the Commission with a Secretary and such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Ordinance.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the Secretary, officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

7. *Salaries and allowances to be paid out of grants.*—The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary, officers and other employees referred to in section 6, shall be paid out of the grants referred to in sub-section (1) of section 14.

8. *Vacancies, etc. not to invalidate proceedings of Commission.*—No act or proceeding of the Commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

9. *Procedure to be regulated by Commission.*—(1) The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.

(2) the Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorised by the Secretary in this behalf.

CHAPTER-III

RIGHT OF A MINORITY EDUCATIONAL INSTITUTION

10. *Right of a Minority Educational Institution to seek affiliation to a Scheduled University.*—Notwithstanding anything contained in any other law for the time being in force, a Minority Educational Institution may seek recognition as an affiliated college of a Scheduled University of its choice.

CHAPTER-IV

FUNCTIONS AND POWER OF THE COMMISSION

11. *Functions of the Commission.*—Notwithstanding anything contained in any other law for the time being in force, the Commission shall—

- (a) advice the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;
- (b) look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating affiliation to a Scheduled University and report its findings to the Central Government for its implementation ; and

(c) to do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

12. Powers of Commission.—(1) If any dispute arises between a minority educational institution and a Scheduled University relating to its affiliation to such University, the decision of the Commission thereon shall be final.

(2) The Commission shall, for the purposes of discharging its functions under this Ordinance have all the powers of a civil court while trying a suit and in particular, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath ;
- (b) requiring the discovery and production of any document ;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office ;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

13. Financial and administrative powers of the Chairperson.—The Chairperson shall exercise such financial and administrative powers as may be vested in him by the rules made under this section :

Provided that the Chairperson shall have authority to delegate such of the financial and administrative powers as he may think fit to any Member or Secretary or any other officer of the Commission subject to the condition that such Member or Secretary or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

CHAPTER-V

FINANCE, ACCOUNTS AND AUDIT

14. Grants by the Central Government.—(1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this ordinance.

(2) The Commission may spend such sums of money as it thinks fit for performing the functions under this Ordinance, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

15. Accounts and audit.—(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Ordinance shall have the same rights

in Privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

16. *Annual report.*—The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

17. *Annual report and audit report to be laid before Parliament.*—The Central Government shall cause the annual report, together with a memorandum of action taken on the advice tendered by the Commission under section 11 and the reasons for the non-acceptance, if any, of any such advice, and the audit report to be laid as soon as may be after they are received before each House of Parliament.

CHAPTER-VI

MISCELLANEOUS

18. *Power to amend Schedule.*—The Central Government if deems fit may, by notification in the Official Gazette, add any other University to the Schedule or omit any University therefrom.

19. *Chairperson, Members, Secretary, employees etc. of the Commission to be public servants.*—The Chairperson, Members, the Secretary, officers and other employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

20. *Direction by the Central Government.*—(1) In the discharge of its functions under this Ordinance, the Commission shall be guided by such direction on questions of policy relating to national purposes, as may be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

21. *Protection against action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the Central Government, Commission, Chairperson, Members, Secretary or any officer or other employee of the Commission for anything which is in good faith done or intended to be done under this Ordinance.

22. *Ordinance to have overriding effect.*—The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Ordinance.

23. *Returns or information.*—The Commission shall furnish to the Central Government such returns or other information with respect to its activities as the Central Government may, from time to time, require.

24. *Power to make rules.*—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

- (a) salaries and allowances payable to, and the other terms and conditions of the service of, the Chairperson and Members under sub-section (5) of section 5 and of the Secretary, officers and other employees under sub-section (2) of section 6;

- (b) the financial and administrative powers to be exercised by the Chairperson under section 13;
- (c) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 15;
- (d) the form in, and the time at, which the annual report shall be prepared under section 16;
- (e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

25. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient, for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance:

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

THE SCHEDULE [See section 2 (j)]

Sl. No. Name of the University

1. University of Delhi.
2. North Eastern Hill University.
3. Pondicherry University.
4. Assam University.
5. Nagaland University.
6. Mizoram University.

A. P. J. ABDUL KALAM,
President.

T. K. VISWANATHAN,
Secretary to the Government of India.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 11th November, 2004/Kartika 20, 1926 (Saka)

THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS
LAWS (AMENDMENT) ORDINANCE, 2004
No. 5 OF 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and further to amend the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Companies Act, 1956.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action.

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER-I

PRELIMINARY

1. *Short title and commencement.*—(1) This Ordinance may be called the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004.

(2) Save as otherwise provided in this Ordinance the provisions of this Ordinance shall come into force at once.

CHAPTER-II

AMENDMENT TO THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

2. *Amendment of section 2.*—In section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) (hereafter in this Chapter referred to as the principal Act), in sub-section (1),—

(i) after clause (h), the following clause shall be inserted, namely:—

“(ha) “debt” shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);”

(ii) in clause (j), the words “in accordance with the directions or guidelines issued by the Reserve Bank” shall be omitted;

(iii) in clause (o), for the words “doubtful or loss asset, in accordance with the directions or under guidelines relating to assets classifications issued by the Reserve Bank”, the following shall be substituted, namely:—

“doubtful or loss asset,—

(a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;

(b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank”.

(iv) in clause (u), for the words “trustee or any assets management company making investment on behalf of mutual fund or provident fund or gratuity fund or pension fund”, the words brackets and figures “trustee or securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3 or any asset management company making investment on behalf of mutual fund” shall be substituted;

(v) in clause (zd), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) securitisation company or reconstruction company, whether acting as such or managing a trust set up by such securitisation company or reconstruction company for the securitisation or reconstruction, as the case may be; or”.

3. *Amendment of section 3.*—In section 3 of the Principal Act, in sub-section (3), after clause (g), the following clause shall be inserted at the end, namely:—

“(h) that securitisation company or reconstruction company has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose”.

4. *Amendment of section 4.*—In section 4 of the principal Act, in sub-section (2),—

(a) the words “rejection of application for registration or” shall be omitted;

(b) for the words “such order of rejection or cancellation”, the words “such order of cancellation” shall be substituted.

5. *Insertion of new section 5A.*—After section 5 of the principal Act, the following section shall be inserted, namely:—

“5A. *Transfer of pending applications to any one of Debts Recovery Tribunals in certain cases.*—(1) If any financial asset, of a borrower acquired by a securitisation company or reconstruction company, comprise of secured debts of more than one bank or financial institution for recovery of which such banks or financial institutions has filed applications before two or more Debts Recovery Tribunals, the securitisation company or reconstruction company may file an application to the Appellate Tribunal having jurisdiction over any of such Tribunals in which such application are pending for transfer of all pending applications to any one of the Debts Recovery Tribunals as it deems fit.

(2) On receipt of such application for transfer of all pending applications under sub-section (1), the Appellate Tribunal may, after giving the parties to the application an opportunity of being heard, pass an order for transfer of the pending applications to any one of the Debts Recovery Tribunals.

(3) Notwithstanding anything contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) any order passed by the Appellate Tribunal under sub-section (2) shall be binding on all the Debts Recovery Tribunals referred to in sub-section (1) as if such order had been passed by the Appellate Tribunal having jurisdiction on each such Debts Recovery Tribunal.

(4) Any recovery certificate, issued by the Debts Recovery Tribunal to which all the pending applications are transferred under sub-section (2), shall be executed in accordance with the provisions contained in sub-section (23) of section 19 and other provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) shall, accordingly, apply to such execution.”.

6. *Amendment of section 7.*—In section 7 of the principal Act,—

(i) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) (a) The scheme for the purpose of offering security receipts under sub-section (1) or raising funds under sub-section (2), may be in the nature of a trust to be managed by the securitisation company or reconstruction company, and the

securitisation company or reconstruction company shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the qualified institutional buyers holding the security receipts or from whom the funds are raised.

(b) The provisions of the Indian Trusts Act, 1882 (2 of 1882), shall, except in so far as they are inconsistent with the provisions of this Act, apply with respect to the trust referred to in clause (a) above.”;

(ii) in sub-section (3), for the word “security receipts issued by such company”, the words “security receipts issued under a scheme by such company” shall be substituted.

7. *Insertion of new section 12A.*—After section 12 of the principal Act, the following section shall be inserted, namely:—

“12 A. *Power of Reserve Bank to call for statements and information.*—The Reserve Bank may at any time direct a securitisation company or reconstruction company to furnish it within such time as may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of such securitisation company or reconstruction company (including any business or affairs with which such company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purposes of this Act.”.

8. *Amendment of section 13.*—In section 13 of the principal Act,—

(i) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A :

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.”;

(ii) in sub-section (4), for clause (b), the following clause shall be substituted, namely:—

“(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt;”.

9. *Amendment of section 15.*—In section 15 of the principal Act, in sub-section (1) for the words “When the management of business of a borrower is taken over by a secured creditor”, the words bracketed, letter and figures “When the management of business of a borrower is taken over by a securitisation company or reconstruction company under clause (a) of section 9 or,

as the case may be, by a secured creditor under clause (b) of sub-section (4) of section 13" shall be substituted.

10. *Amendment of section 17.*—In section 17 of the principal Act:—

(a) in sub-section (1),—

(i) for the words "may prefer an appeal" the words "may make an application along with such fee, as may be prescribed", shall be substituted and shall be deemed to have been substituted with effect from the 21st day of June, 2002;

(ii) after sub-section (1), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 21st day of June, 2002, namely:—

"Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower".

(iii) after the proviso as so inserted, the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17."

(b) for sub-section (2) and (3), the following sub-sections shall be substituted, namely:—

"(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If the Debts Recovery Tribunal after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order (4) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more, of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application.

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debt Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), and the rules made thereunder."

11. *Insertion of new section 17-A.*—After section 17 of the principal Act, the following section shall be inserted, namely:—

"17 A. *Making of application to Court of District Judge in certain cases.*—In the case of a borrower residing in the State of Jammu and Kashmir, the application under section 17 shall be made to the Court of District Judge in that State having jurisdiction over the borrower which shall pass an order on such application.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor or for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons shall not entitle the person (including borrower) to make an application to the Court of District Judge under this section."

12. *Amendment of section 18.*—In section 18 of the principal Act,

(a) in sub-section (1),—

(i) for the words and figures "under section 17, may prefer an appeal", the words and figures "under section 17, may prefer an appeal alongwith such fee, as may be prescribed" shall be substituted and shall be deemed to have been substituted with effect from the 21st day of June, 2002 ;

(ii) after sub-section (1), the following proviso shall be inserted and shall be deemed to have been inserted with effect from 21st day of June, 2002, namely:—

"Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower: ";

(iii) after the proviso as so inserted, the following provisos shall be inserted, namely:—

"Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less :

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing reduces the amount to not less than twenty-five per cent. of debt referred to in the second proviso."

13. *Insertion of new sections 18A and 18B.*—After section 18 of the principal Act, the following section shall be inserted, namely:—

18 A. *Validation of fees levied.*—Any fee levied and collected for preferring, before the Commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004, an appeal to the Debts Recovery Tribunal or the Appellate Tribunal under this Act, shall be deemed always to have been levied and collected in accordance with law as if amendments made to section 17 and 18 of this Act by sections 11 and 12 of the said Ordinance were in force at all material time.

18 B. *Appeal to High Court in certain cases.*—Any borrower residing in the State of Jammu and Kashmir and aggrieved by any order made by the Court of District Judge under section 17A may prefer an appeal, to the High Court having jurisdiction over such Court within thirty days from the date of receipt of the order of the Court of District Judge :

Provided that no appeal shall be preferred unless the borrower has deposited, with the Jammu and Kashmir High Court, fifty per cent of the amount of the debt due from him as claimed by the secured creditor or determined by the Court of District Judge, whichever is less :

Provided further that the High Court may, for the reason to be recorded in writing, reduced the amount to not less than twenty-five per cent. of the debt referred to in the first proviso. ”

14. *Substitution of new section for section 19.*—For section 19 of the principal Act, the following section shall be substituted, namely:—

“19. *Right of borrower to receive compensation and costs in certain cases.*—If the Debt Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17A or the Appellate Tribunal or the High Court on an appeal preferred under section 18 of section 18A holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rule made thereunder and directs the secured creditor to return such secured assets to the concerned borrower, such borrower shall be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in section 18 B.”

15. *Amendment of Section 25.*—In section 25 of the principal Act, —

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) On receipt of intimation under sub-section (1), the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.”;

(b) in sub-section (2), for the word “The Central Registrar shall, on receipt of such intimation”, the words, brackets and figures “If the concerned borrower gives an intimation to the Central Registrar for not recording the payment or satisfaction referred to in sub-section (1), the Central Registrar shall on receipt of such intimation” shall be substituted.

16. *Amendment of section 28.*—In section 28 of the principal Act, for the words and figures “under section 12”, the words figures and letter “under section 12 or section 12A” shall be substituted.

17. *Amendment of section 31.*—In section 31 of the principal Act, in clause (g), for the words “any properties not liable to attachment”, the words and brackets “any properties (including the properties specifically charged with the debt recoverable under this Act)” shall be substituted.

18. *Amendment of section 38.*—In section 38 of the principal Act, in sub-section (2), after clause (b), the following clauses shall be inserted, namely:—

- “(ba) the fee for making an application to the Debt Recovery Tribunal under sub-section (1) of section 17 ;
- (bb) the form of making an application to the Appellate Tribunal under sub-section (6) of section 17 ;
- (bc) the fee for preferring an appeal to the Appellate Tribunal under sub-section (1) of section 18 ;”.

CHAPTER III

AMENDMENTS TO THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT 1993

19. *Amendment of Section 2.*—In section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) (hereinafter in this Chapter referred to as the principal Act), in clause (h), after sub-clause (i), the following sub-clause shall be inserted, namely:—

- “(ia) the securitisation company or reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);”.

20. *Amendment of section 19.*—In section 19 of the principal Act, after sub-section (1), the following proviso shall be inserted, namely:—

- “Provided that the bank of financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Law (Amendment) Ordinance, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act.

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application :

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.”.

CHAPTER IV

AMENDMENTS TO THE COMPANIES ACT, 1956

21. *Amendment of Section 4A.*—In section 4A of the Companies Act, 1956 (1 of 1956) hereafter in this Chapter referred to as the principal Act), in sub-section (1), clause (vii) shall be omitted.

22. Amendment of section 424A.—In section 424 A of the principal Act, in sub-section (1), after the second proviso, the following provisos shall be inserted, namely:—

“Provided also that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004, such reference shall abate if the secured creditors representing three fourth in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002):

Provided also that no reference shall be made under this section if the secured creditors representing three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 (54 of 2002).”

A. P. J. ABDUL KALAM,
President.

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T. K. VISWANATHAN,
Secretary to the Govt. of India.

